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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/622,171	07/17/2003	Donald L. Meyer	58631/10	7595

1912 7590 10/07/2004

AMSTER, ROTHSTEIN & EBENSTEIN
90 PARK AVENUE
NEW YORK, NY 10016

EXAMINER

THISSELL, JENNIFER I

ART UNIT	PAPER NUMBER
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3635

DATE MAILED: 10/07/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/622,171

Applicant(s)

MEYER, DONALD L.

Examiner

Jennifer I Thissell

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 17 July 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-15 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-15 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 17 July 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 7/17/03.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION***Drawings/Specification***

The drawings are objected to because they fail to show a "Figure 4" as described in the specification.

Corrected drawing sheets are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-4, 7, 8, and 11-13 are rejected under 35 U.S.C. 102(b) as being anticipated by Walker ('714). Walker teaches a barrier comprising a plurality of generally rectangle flexible blankets 10, each blanket defines a central body and a peripheral margin 4 about edges of the body, the edges of the bodies overlap (Figure 3) forming a single pair of edges and a blanket with four edges overlapping, the body has a base layer of thermal insulation 3 and two cover layers 1,2 of waterproof material, the cover layers are sealed together peripherally about the base layer (Figures 1-3) to form a seamed peripheral margin, there are grommets 41 extending through the peripheral margin of each blanket, securing means (Figure 3) extending through some of the grommets, and each blanket is sufficiently flexible to be rolled up (column 3, lines 63-64). The waterproof material is sheet-like, moistureproof, and inherently impervious to soil gas, as the material can be a sealed high density polyethylene (column 3, lines 18-21).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 5, 6, and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Walker ('714). Walker teaches a structure as stated above, but does not specify that the edges overlap by at least 1.5 inches and not more than 4.0 inches, or that the blanket has a thickness of not more than 1.5 inches. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have the edges overlap in the stated range and the thickness not more than 1.5 inches, since discovering the optimum value is considered routine in the art. The blankets must have enough space for the edge connection without severely reducing the area in which insulation exists, and the blanket should not be too thick so as to hinder the workability and ease of placement on a structure.

Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Walker ('714) in view of Christoffersen ('038). Walker teaches a structure as stated above, but does not include a metallized surface as at least one of the cover layers. Christoffersen shows an insulative blanket

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with two cover layers surrounding an interior insulative material, in which the covers are insulative metal sheets, such as aluminum foil (column 4, lines 11-12). It would have been obvious to one having ordinary skill in the art at the time the invention was made to have or include a metallized cover layer, as this material is insulative and impermeable. A metallized material or foil would be beneficial since its thickness is generally minimal and therefore flexible.

Claims 14 and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Walker ('714) in view of Repp et al. ('397). Walker teaches a structure as stated above, but does not include a plurality of fixation means extending through each blanket body. Repp shows a blanket with two outer cover layers, an interior layer, and a plurality of fixation means 5 extending through the blanket body to fix the relative position of the interior relative to the cover layers. Accordingly, it would have been obvious to one having ordinary skill in the art at the time the invention was made to include a fixation means with a blanket having an interior material that may be likely to shift.

Walker does not specify that the edges overlap by at least 1.5 inches and not more than 4.0 inches, or that the blanket has a thickness of not more than 1.5 inches. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have the edges overlap in the stated range and the thickness not more than 1.5

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inches, since discovering the optimum value is considered routine in the art. The blankets must have enough space for the edge connection without severely reducing the area in which insulation exists, and the blanket should not be too thick so as to hinder the workability and ease of placement on a structure.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jennifer I Thissell whose telephone number is (703) 306-5750. The examiner can normally be reached on Mondays and Tuesdays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Carl Friedman can be reached on (703) 308-0839. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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Primary

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